



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-94-8*

FACTS:

You are the Chief of Police in the Town of Falmouth ("Town"). Three police officers would like to provide private security services to two hotels and a private beach association located in the Town. The private work in question will be provided by the officers outside of the Town's established detail system.^{1/} The officers would be employed at a rate of between \$15 and \$22 per hour. Under the Town's detail system, private parties request services from the Police Department and officers are assigned by a rotation system so that all officers have an equal opportunity to work details. You state that some private employers have chosen to hire officers outside of the detail system because they are assured of getting the services of the same officer each time and they need not pay the Town's established detail rate. We note that these officers would not wear police uniforms while engaging in this private work. The officers would assume positions with titles such as "desk clerk" and "security guard".

You have provided us with relevant portions of the Falmouth Police Department Manual which provides the following:

Duty Status - Although officers of the force are assigned specific hours of regular duty, they shall be considered "on duty" at all times for the preservation of the public peace and the protection of life and property, and shall be prepared to take all reasonable police action to accomplish this purpose. All serious matters of public concern shall receive appropriate attention, even though an officer is not on duty at the time.

QUESTION:

Can officers in the Falmouth Police Department be hired privately for security related detail work outside of the detail system established by the Town?^{2/}

ANSWER:

Section 23(b)(1) of G.L. c. 268A will prohibit police officers from providing private security services (in Town) outside of the Town's detail system.

DISCUSSION:

The Town's police officers are "municipal employees" for purposes of the conflict of interest law. As such, they are subject to §23(b)(1), which prohibits a municipal employee from accepting other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his public office. We have previously held that this provision of G.L. c. 268A seeks to prevent the impairment of a public official's independence of judgment in the performance of his official duties which may result from certain types of private employment. See *EC-COI-94-2* (local building inspector may not provide private home inspection services in town by which he is employed because he may encounter situations in the course of his private work where he is legally required to take action as a public official). In 1985, the Commission found a violation of the conflict of interest law where a municipal police lieutenant simultaneously held a private job as an assistant racetrack security chief. The Commission found that where the racetrack relied on municipal police services, the officer's private duties "necessarily impair[ed] the independence of his judgment in the performance of his official duties". *In re DiPasquale*, 1985 SEC 239; see *In re DeLeire*, 1985 SEC 236.^{3/}

In the case of the Town's police officers, pursuant to Department policy, officers are required to take reasonable police action when necessary, even during their off duty hours. It follows that private security employment may impair the independence of an officer's judgment in the performance of his police duties. For example, a situation may arise where a private party employing a police officer to perform private security services desires that the Falmouth police not be involved (because of adverse publicity or otherwise). However, under the Police Department policy concerning preservation of the public peace and protection of property, such a situation may require police action by the officer in question, notwithstanding his off duty status. At that point, the officer would be forced to choose between his public position obligations and the wishes of his private employer. Because an officer cannot anticipate when a situation raising the possibility of divided loyalties may arise, we find that the officers would violate §23(b)(1) by accepting private security-related employment in the town in which they are serving as police officers,^{4/} which is not pursuant to the Town's detail system. See *EC-COI-94-2*.^{5/}

DATE AUTHORIZED: September 13, 1994

* Pursuant to G.L. c. 268B, §3(g), the requesting person has consented to the publication of this opinion with identifying information.

^{1/} General Laws c. 44, §53(c) requires that all money received by a municipality for work performed by one of its employees for an off-duty work detail related to an officer's regular employment or for special detail work be deposited into the municipal treasury and be paid out without further appropriation to compensate employees for such services. That statutory provision does not appear, however, to prohibit or otherwise limit private security-related employment arrangements between a police officer and a private party where compensation is paid directly to the officer. At most, it evidences legislative recognition of municipality-sanctioned detail systems.

^{2/} Recognizing that the question involves public policy concerns, we sought public comment on this issue. We acknowledge helpful submissions by the Massachusetts Municipal Association, the Wellesley Chamber of Commerce, Inc., the mayor of the City of Everett, John R. McCarthy, and the Massachusetts Chiefs of Police Association. In reviewing the submissions, we found persuasive several public policy arguments against permitting police officers to engage in private security work outside of a municipality's detail system. For example, the Massachusetts Municipal Association raised concern about the lack of guidelines or policies governing an officer's duties in the context of private security work. According to the Municipal Association, under a municipality's established detail system, police chiefs retain some authority to determine whether certain detail work is acceptable. In its submission, the Municipal Association also noted that in engaging in private security work, the officers would likely carry weapons issued by the municipality and would be relying on police training provided by or through the municipality. In light of the foregoing, the Municipal Association was concerned about a municipality's potential liability in the event of an error or other unfortunate incident during the course of an officer's private security services.

^{3/} We note that in *EC-COI-89-30*, we found that a municipal police chief would not violate §23(b)(1) by engaging in private security consulting work. In that opinion we acknowledged that the prospective conduct was similar to that discussed in *In re DiPasquale*; *In re DeLeire*, *id.* Nevertheless, because the board of selectmen had approved of the police chief's outside employment and provided that there were no material changes in the conditions of the private employment, we found no violation of §23(b)(1). We find the case at hand to be factually dissimilar to *EC-COI-89-30* as the officers here would be providing actual security services for their private employers rather than serving in a consulting role (evaluating the performance of other security providers).

^{4/} In its submission, the Massachusetts Chiefs of Police Association notes that private security work in another municipality will not result in an inherently incompatible employment situation. We concur. Nothing in the conflict of interest law will prohibit a police officer from engaging in private security work in a municipality other than the one by which the officer is employed.

^{5/} The Massachusetts Chiefs of Police Association suggests that potential problems concerning outside employment by police officers can best be addressed and resolved through departmental rules and regulations. In the case of private security work in a community where existing departmental rules require officers to be "on duty" at all times (such as the rule we have before us today), we find the likelihood of inherent incompatibility to be significant. We therefore conclude that such private security work presents the very type of situation contemplated by the §23(b)(1) restriction. We do not mean, however, to suggest that all types of outside employment (other than security work) would be inherently incompatible, nor do we mean to suggest that municipalities are precluded from establishing standards more restrictive than the conflict of interest law concerning outside employment by their police officers. See *EC-COI-93-23*.